

**Master Contract Number T05-MST-001**

**for**

**Business Continuity Site Services**

**between**

***The Department of Information Services***

**and**

***Liberty Lake Internet Exchange, LLC***

**Effective Date:     March 16, 2005**

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**MASTER CONTRACT NUMBER T05-MST-001**

**for**

**Business Continuity Site Services**

**PARTIES**

This Master Contract ("Contract") is entered into by and between the state of Washington acting through the **Department of Information Services**, an agency of Washington State government (hereinafter "DIS"), and **Liberty Lake Internet Exchange, LLC**, a Limited Liability Company licensed to conduct business in the state of Washington, (hereinafter "Contractor") for the provisioning of Business Continuity Site Services to the State, specifically:

**RECITALS**

The state of Washington, acting by and through DIS, issued a Request for Quotations (RFQ) dated October 18, 2004 (Exhibit A) for the purpose of establishing Master Contracts for Business Continuity Site Services in accordance with its authority under chapter 43.105 RCW.

Contractor submitted a timely Response to DIS' RFQ (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFQ and has identified Contractor as an apparently successful Vendor.

DIS has determined that entering into a Master Contract with Contractor will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, DIS awards to Contractor this Master Contract, the terms and conditions of which shall govern Contractor's furnishing the Business Continuity Site Services to Purchasers. This Master Contract is not for personal use.

This Master Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Products or Services hereunder. Nor does the Master Contract prevent the State from purchasing the same or similar Products or Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

**1. Definition of Terms**

The following terms as used throughout this Contract shall have the meanings set forth below.

**"Business Days and Hours"** shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

**"Cold Site"** shall mean a disaster recovery facility that provides guaranteed access to cageless, physical rack and cabinet space, standard data center power and environmental conditions, and office space for recovery operations. Purchasers will pay Contractor for the reservation of space for Purchaser racks and place equipment and personnel in Cold Site facilities only after a Disaster Declaration.

**“Confidential Information”** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser or State security information.

**“Contractor”** shall mean Liberty Lake Internet Exchange, LLC, its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Contract.

**“Contractor Account Manager”** shall mean a representative of Contractor who is assigned as the primary contact person with whom the DIS Contract Administrator shall work throughout the duration of this Contract, unless replaced, with advance approval of the DIS Contract Administrator, and as further defined in the section titled **Contractor Account Manager**.

**“Contractor Site Activation Manager”** shall mean a representative of Contractor who shall be the principal point of contact for Purchaser and shall coordinate Contractor’s activities with Purchaser, as further defined in the section titled Contractor Site Activation Manager.

**“Contractor Site Services”** see **Services**.

**“Contractor Site Services Location”** shall mean the physical facility from which Contractor offers the Services.

**“DIS”** shall mean the Washington State Department of Information Services.

**“DIS Contract Administrator”** shall mean the TSD Contract Administrator, designated by DIS as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation or information. The DIS Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

**“Disaster Declaration”** shall mean a notification by Purchaser(s) to Contractor(s) that a disaster has occurred that has rendered Purchaser facilities non-operational in whole or in part.

**“Effective Date”** shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

**“Exhibit A”** shall mean the RFQ.

**“Exhibit B”** shall mean Contractor’s Response.

**“Large Site Services Location”** shall mean a Contractor-provided facility that meets all of the Specifications and is sufficiently sized to accommodate a minimum of 100 Purchaser racks and have 1,500 square feet of office space available for Purchasers as of the time of Contractor’s Response.

**“Live Site”** shall mean a Contractor-provided, cageless, collocation facility used by Purchasers as a fully operational computing facility equipped with Purchaser-provided hardware. Live sites may serve as a primary computing facility for Purchasers or be load balanced with other Purchaser facilities.

**“Master Contract”** or **“Contract”** shall mean this document, all schedules and exhibits, all amendments hereto and all Orders hereunder.

**“Minimum Service Commitment”** shall mean a one year term that shall be the minimum term for a or else Purchaser will incur Termination Liability.

**“Order”** or **“Order Document”** shall mean any official document and attachments thereto specifying the Services to be purchased from Contractor under this Contract.

**“Price”** shall mean charges, costs, rates, and/or fees charged for the Services under this Contract and shall be paid in United States dollars.

**“Proprietary Information”** shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**“Purchaser”** shall mean DIS and those government or nonprofit entities that have entered into an Interlocal or Customer Service Agreement with DIS.

**“Rack”** shall mean a standard 88-inch high racks that complies with EIA standard 310-D.

**“RCW”** shall mean the Revised Code of Washington.

**“RFQ”** shall mean the Request for Quotation for Business Continuity Site Services, #T05-RFQ-002, used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

**“Response”** shall mean Contractor’s Response to the RFQ for Business Continuity Site Services, Exhibit B hereto.

**“Schedule A: Price List”** shall mean the attachment to this Contract that identifies the Services and Prices available under this Contract.

**“Schedule B: Statement of Work Outline”** shall mean the attachment to this Contract that provides example terms and conditions for a Statement of Work.

**“Services”** shall mean Contractor-provided services that meet the Specifications, including Cold Site, Warm Site, and Live Site Services in either the Small or Large Site Services category.

**“Small Site Services Location”** shall mean a Contractor-provided facility that meets all of the Specifications and is sufficiently sized to accommodate a minimum of 15 Purchaser racks and have 500 square feet of office space available for Purchasers as of the time of Contractor’s Response.

**“Specifications”** shall mean the technical and other specifications and requirements set forth in the RFQ, Exhibit A, any additional specifications set forth in Contractor’s Response, Exhibit B.

**“State”** shall mean the state of Washington.

**“Statement of Work”** or **“SOW”** shall mean a separate agreement between Purchaser and Contractor for the specific Business Continuity Site Services to be purchased under the terms and conditions of this Contract. An outline for a SOW is attached as Schedule B.

**“Subcontractor”** shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

**“Supplemental Work Order”** shall mean the same as Statement of Work.

**“Termination Liability”** shall mean an amount equal to 40% of the monthly recurring cost of the Services terminated times the number of months remaining in the Minimum Service Commitment period, plus any unpaid nonrecurring charges.

**“TSD”** shall mean the Telecommunication Services Division of DIS.

**“Warm Site”** shall mean a standby disaster recovery facility that provides unmanaged, cageless, collocation services, offering physical space, standard data center power and environmental conditions, and office space for recovery operations. Purchasers will position racks and equipment in Warm Site facilities in advance of a disaster and activate the equipment and place personnel in the facility only in the event of a Disaster Declaration.

## Contract Term

### 2. Term

- 2.1. This Master Contract’s initial term shall be three (3) years, commencing upon the Effective Date.
- 2.2. This Master Contract’s term may be extended by four (4) additional one (1) year terms, provided that the extensions shall be at DIS’ option and shall be effected by DIS giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the Contract term’s expiration and Contractor accepting such extension prior to the Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.
- 2.3. Term of Statement of Work (SOW).
  - a) The minimum term for a SOW will be one (1) year, the Minimum Service Commitment and the parties may agree to a longer term.
  - b) SOWs may be renewed for periods of less than a year.
  - c) SOWs or renewal SOWs entered into prior to the expiration or other termination of the Master Contract may be completed under the Master Contract terms and conditions in effect when the SOW or renewal SOW was entered into. In no event shall the term of any SOW extend more than two (2) years beyond the term of the Master Contract.
  - d) New SOWs or renewal SOWs may not be entered into after the expiration or other termination of the Master Contract.
  - e) A SOW may be terminated in accordance with the termination sections of this Contract or as otherwise agreed between the parties.

### 3. Survivorship

All purchase transactions executed pursuant to the authority of this Master Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Contractor; Ownership/Rights in Data; Contractor Commitments, Warranties and Representations; Protection of Purchaser’s Confidential Information; License Grant; Software Ownership; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor’s Records; Patent and Copyright Indemnification; Contractor’s**



**Proprietary Information; Disputes; and Limitation of Liability**, shall survive the termination of this Master Contract.

## **Pricing, Invoice and Payment**

### **4. Pricing**

- 4.1. Contractor agrees to provide the Business Continuity Site Services to Purchasers at the Prices set forth in the *Price List* attached as Schedule A to this Master Contract. Such Prices may not be increased during the term of this Master Contract.
- 4.2. The Prices set out in Schedule A are understood to be the maximum Prices that can be charged for the Services. Contractor can offer lower pricing to Purchasers through a general price reduction, announced promotions, volume discounts or a Contractor-defined standard Service package. Purchasers shall pay the lower of the Prices on Schedule A, or a general price reduction Price, or an announced promotion Price, or a volume discount Price or a Contractor-defined standard Service package Price.
- 4.3. If Contractor institutes a general price reduction for any of the Services during the term of this Master Contract, Purchaser shall have the immediate benefit of such lower prices for new purchases. Contractor will send notice to the DIS Contract Administrator with the reduced prices within fifteen (15) calendar days of the reduction taking effect.

### **5. Advance Payment Prohibited**

No advance payment shall be made for the Services furnished by Contractor pursuant to this Contract.

### **6. Taxes**

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 6.2. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

### **7. Invoice and Payment**

- 7.1. Contractor will submit properly itemized invoices to the person identified by Purchaser at the address provided by Purchaser. Invoices shall provide and itemize, as applicable:
  - a) Master Contract number T05-MST-001;
  - b) Purchaser's Order Number;
  - c) Contractor name, address, phone number;

- d) Description of Services provided;
  - e) Date(s) of delivery of Services;
  - f) Price for each Service;
  - g) Total purchase Price;
  - h) Applicable taxes;
  - i) DIS Master Contract Administration Fee (0.5% or 0.005 of the total purchase price);
  - j) Other applicable charges;
  - k) Total invoice amount; and
  - l) Payment terms including any available prompt payment discounts.
- 7.2. Contractor shall provide its Federal Tax Identification Number to Purchaser on or before delivering its first invoice to Purchaser.
- 7.3. Invoices shall be submitted to Purchasers no later than the last Business Day of the month following the month in which the Business Continuity Site Services were provided to Purchasers.
- 7.4. Payments shall be due and payable within thirty (30) calendar days after receipt of Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.5. Purchaser shall pay for Services on a monthly basis, in arrears. Payment for Services provided for less than one (1) month's duration shall be prorated at 1/30<sup>th</sup> of the monthly charges for each calendar day that Services were provided.
- 7.6. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.
- 7.7. The Master Contract number, T05-MST-001, and Purchaser's SOW number must appear on all bills of lading, invoices, packages, and correspondence with Purchaser relating to this Contract and Purchaser's SOW.
- 7.8. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of receipt of Contractor's properly prepared invoice.

## **8. Overpayments to Contractor**

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

## **Contractor's Responsibilities**

### **9. Site Availability**

Vendor agrees to make available to Purchasers, at all times during the term(s) of any Statement(s) of Work executed pursuant to this Master Contract, the contracted Cold, Warm, and Live Site Services described in such Statement(s) of Work at the prices set forth in Schedule A.

### **10. RFQ Mandatory Requirements**

The RFQ mandatory requirements are essential substantive terms of this Master Contract. Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFQ.

### **11. Contractor's Status as a Washington Business**

Contractor shall register with the Washington State Department of Revenue and shall collect and report all applicable state taxes.

### **12. Site Services Availability and Site Visits**

- 12.1. Contractor's Business Continuity Site Services facility shall be fully operational in accordance with the Specifications within 120 days of the date of Contractor's Response, Exhibit B.
- 12.2. Contractor shall allow DIS to conduct site visits to verify the operational status of Contractor's facility and compliance with the Specifications.
- 12.3. Upon Purchaser's request, Contractor shall provide a pre-sale site visit to prospective Purchasers, including a tour of the data center floor.
- 12.4. Contractor's Services shall be available 24 hours a day, 365/6 days a year, without interruption for weekends or holidays.

### **13. Physical Plant & Environmental Requirements**

- 13.1. Building Code Conformity. The Contractor Site Services Location(s) shall conform to the Uniform Building Code and Uniform Building Code Standards, published by the International Conference of Building Officials.
- 13.2. Overhead Raceways / Raised Floor. The Contractor Site Services Location(s) shall utilize either an overhead raceway designed in conformity with EIA/TIA-569 "Commercial Building Standard for Telecommunications Pathways and Spaces" or a raised floor with loading of at least 150 lbs/sq ft with spacing at a minimum of 12 inches from the sub-floor to the bottom of the raised floor tile.
- 13.3. Fire Suppression. The Contractor Site Services Location(s) shall incorporate a clean agent gas fire suppression system designed in compliance with the NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems.
- 13.4. Fire Detection. The Contractor Site Services Location(s) shall provide zoned fire detection with both smoke and high temperature heat detectors.

- 13.5. Power. The Contractor Site Services Location(s) shall provide a remotely monitored Uninterruptible Power Supply (UPS) system sized for the critical data center load and a backup generator with on-site fuel storage to allow continuous, uninterrupted support of the facility on generator for one week.
- 13.6. HVAC. The Contractor Site Services Location(s) shall utilize a remotely monitored HVAC system designed to allow half of the HVAC to be out of service without impact to the cooling environment on the data center floor. The HVAC system shall provide switchable heat rejection ability (including all associated equipment). The HVAC system shall be designed in compliance with the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) "Thermal Guidelines for Data Processing Environments."
- 13.7. Storage Space. Contractor Site Services Location(s) shall be able to offer Purchasers individual lockable storage, separate from other Purchasers or other organizations utilizing Contractor facility.
- 13.8. Rack Space. Contractor Site Services Location(s) shall provide floor space for standard 88-inch high racks that comply with EIA standard 310-D.
- 13.9. Loading Dock. The proposed Contractor Site Services Location(s) shall offer a loading dock that can accommodate vehicles up to a standard 40-foot semi-truck trailer.

#### **14. Telecommunications Requirements**

- 14.1. Telco Facilities. Within 120 days of the Contractor's Response, the Contractor Site Services location(s) shall have available physically diverse (including separate entrance facilities), fiber-based services (e.g. Gigabit Ethernet and SONET), and ATM, DS1, frame relay telecommunication services available from a carrier licensed by the Washington Utilities and Transportation Commission.
- 14.2. Internal Cabling. Contractor is solely responsible for and shall provide wiring from the telco demarc to the Purchaser equipment, including all of the following: twisted pair, coaxial cable, CAT5e (or better), and fiber. Contractor shall have the ability to provide direct inward dial (DID) phone lines to equipment on the data center floor to allow dial-up remote access. Cable runs to Purchaser equipment shall not exceed applicable industry standards for the type of service supported.

#### **15. Facilities for Purchaser Personnel**

Contractor's Site Services Location(s) shall offer all of the following amenities for Purchaser personnel to use during a declared disaster or a continuity/disaster exercise:

- 15.1. Conference Room. Conference room shall support twelve (12) Purchaser staff with telephone communications offering unrestricted outbound access to toll free numbers, Internet access, chairs and a conference table and whiteboard.
- 15.2. Break room. The break room shall support twelve (12) Purchaser staff with a sink, refrigerator, microwave, and table and chairs.
- 15.3. Fax machine;
- 15.4. Copy machine;

- 15.5. Cable / Satellite Television;
- 15.6. Parking for up to twelve (12) Purchaser staff;
- 15.7. Parking for portable office trailers.

## **16. Contractor's Service and Pricing Information**

Contractor shall provide DIS information about its Services (e.g., Cold, Warm or Live Site, location) and Prices in either web-ready HTML or Adobe PDF format for approval by DIS and posting to the DIS TechMall.

## **17. Statement of Work**

- 17.1. All Services shall be performed pursuant to the terms of this Contract and shall be documented in an SOW established between Purchaser and Contractor.
- 17.2. The terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.
- 17.3. No work shall be performed by Contractor until an SOW is executed by Contractor and Purchaser and is received by Contractor.
- 17.4. The minimum term for a SOW will be one (1) year, the Minimum Service Commitment and the parties may agree to a longer term. For terminations of SOWs without cause prior to the expiration of the Minimum Service Commitment, Termination Liability shall be an amount equal to 40% of the monthly recurring cost of the Services terminated times the number of months remaining in the Minimum Service Commitment period, plus any unpaid nonrecurring charges.
- 17.5. SOWs may be renewed for periods of less than a year.
- 17.6. Contractor shall keep a record of all SOWs established under the Master Contract in accordance with the requirements set forth in Section 40 **Review of Contractor's Records**, and must provide a copy of the document to DIS upon request.

## **18. Ownership/Rights in Data**

- 18.1. Contractor agrees that any custom additions and modifications to its Preexisting Material (defined below) and all data and work products produced pursuant to this Master Contract and any SOW (collectively called "Work Product") shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq., and shall be owned by Purchaser.
- 18.2. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, any custom additions and modifications to Preexisting Material, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

- 18.3. If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 18.4. Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.
- 18.5. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of Purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 18.6. Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license.
- 18.7. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document that was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

## 19. Contractor Account Manager

Contractor shall provide a full time Account Manager for the State's account who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager shall be available for Service questions and assistance and to promote, market and demonstrate the Services to prospective Purchasers and shall be reachable by a toll free number. Contractor's Account Manager will be the principal point of contact for DIS concerning Contractor's performance under this Contract. Contractor shall notify the DIS Contract Administrator, in writing, when there is a new Contractor Account Manager assigned to this Contract. The Contractor Account Manager information is:

Contractor Account Manager: Chris Walter		
Address: 23403 East Mission, Liberty Lake, WA 99019		
Phone: 509-688-2563	Fax: 509-688-2590	E-mail: cwalter@llix.net
Cell: 509-998-0033	Toll Free Phone: 800-691-5152	

## 20. Contractor Site Activation Manager

Contractor shall designate a Contractor Site Activation Manager for each Purchaser, who shall be the principal point of contact for Purchaser and shall coordinate Contractor's activities with

Purchaser upon a Purchaser Disaster Declaration. The Site Activation Manager shall produce and maintain a complete activation plan designed to expedite Purchaser access to and activation of Contractor's Facility during recovery operations. The Contractor Site Activation Manager may be the same person as the Contractor Account Manager.

## **21. Disaster Declaration**

Contractor shall maintain a list of Purchaser personnel authorized to issue a Disaster Declaration and shall provide a toll free telephone number for Purchasers to use for Disaster Declaration and for Service questions/assistance. Contractor shall respond to pages or voice messages left at this number within fifteen (15) minutes of the call. Contractor's Facility shall be ready to receive Purchaser equipment and/or personnel within two (2) hours of a Disaster Declaration.

## **22. Oversubscription and Multiple Disasters**

The Prices in Schedule A are for guaranteed Cold, Warm, or Live Site Services. Contractor will not oversubscribe the spaces reserved by Purchasers contracting for Site Services and shall be able to support simultaneous Disaster Declarations by multiple Purchasers. In the event of multiple disasters, the Facilities for Purchaser Personnel described in Section 15 may be oversubscribed and are available on a first-come first-served basis.

## **23. Continuity/Disaster Exercises**

Contractor shall allow Purchasers to conduct continuity/disaster exercises and testing not less than twice a year.

## **24. Installation and Set-up**

Contractor will provide at no additional charge the following installation support:

- 24.1. Purchaser Installation Assistance Planning. Contractor shall provide Purchaser installation assistance planning and management to conform with Contractor's facility plan.
- 24.2. Review of Purchaser Requirements. Contractor shall provide pre-sale reviews to identify user requirements, including meeting with individuals responsible for business continuity planning, to aid in the design and development of system capabilities to match Purchaser needs. Contractor will acquire any permits, if required, at no additional cost to Purchaser.
- 24.3. Site Floor Plan. Contractor shall post at the site and provide DIS and Purchaser with a floor plan showing the suggested (or required) layout of racks and access areas.
- 24.4. Rack Installation. Contractor shall provide the installation of Purchaser-provided racks, including cutting floor tiles, as applicable, power and data cabling, and leveling.
- 24.5. On-Site Technician. Contractor shall provide an on-site technician during and after installation of Purchaser equipment to verify that power and data cabling are functional.

## **25. Site Security, Monitoring and Access**

- 25.1. Contractor shall utilize 24x7 monitoring (e.g., recorded closed circuit television) and access control systems that require positive identification and logging of all persons who access

the site. Security monitoring and access control shall extend to all facility entrances and outside facility exposures. Contractor shall allow DIS to inspect these logs upon request.

- 25.2. Contractor shall provide Purchaser personnel 24x7 access to the Vendor Site Services Location(s) when Contractor's facility is being used as a Live Site and during a Declared Disaster for Cold Sites and Warm Sites.

## **26. Contractor Commitments, Warranties and Representations**

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

## **27. Protection of Purchaser's Confidential Information**

- 27.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 27.2. Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.
- 27.3. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 27.4. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

## **Purchaser's Authority and Responsibilities**

### **28. Purchaser Use of Master Contract**

- 28.1. This Master Contract may be used only by Purchasers who have a Customer Service Agreement with DIS and is not for personal use. Reference of this Master Contract Number



and/or Purchaser's signature on the Order Document signifies agreement to comply with these requirements. Failure to abide by these requirements may result in the Purchaser forfeiting the right to make future purchases under this or other Master Contracts.

- 28.2. Purchaser shall comply with the terms and conditions of this Master Contract, including but not limited to the notice requirements set forth in the provision titled **Contractor's Proprietary Information**. Reference of this Master Contract Number and/or Purchaser's signature on the Order Document signifies agreement to comply with the terms of this Master Contract.

## Contract Administration

### 29. Legal Notices

- 29.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses and fax numbers provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

#### To Contractor at:

Liberty Lake Internet Exchange, LLC

**Attn:** Gregory Zemp  
General Manager / Member

23403 E. Mission Ave.  
Liberty Lake, WA 99019

Phone:  
Fax: 509-688-2590  
E-mail: [gzemp@ilix.net](mailto:gzemp@ilix.net)

#### To DIS at:

State of Washington  
Department of Information Services  
**Attn:** TSD Contract Administrator

#### *If by US Postal Service: If by Overnight Courier:*

PO Box 42445                      2411 Chandler Court SW  
Olympia, WA 98504              Olympia, WA 98502

Phone: 360-725-4200  
Fax: 360-664-0711  
E-mail: [mcadmin@dis.wa.gov](mailto:mcadmin@dis.wa.gov)

or to **Purchasers** at the address and fax number listed on their purchase order.

- 29.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 29.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products or Services provided pursuant to this Contract is served upon Contractor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and Purchaser further agree to cooperate with the other party in any lawful effort by the other

party to contest the legal validity of such subpoena or other legal process commenced by a third party.

### **30. Section Headings, Incorporated Documents and Order of Precedence**

- 30.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 30.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
  - a) Schedules A, B, and C;
  - b) DIS' RFQ (Exhibit A);
  - c) Contractor's Response (Exhibit B);
  - d) The terms and conditions contained on Purchaser's Order Documents, if used; and
  - e) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Equipment to Purchaser.
- 30.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
  - a) Applicable federal and state statutes, laws, and regulations;
  - b) Sections of this Contract;
  - c) Schedules A, B, and C;
  - d) DIS' RFQ (Exhibit A);
  - e) Contractor's Response (Exhibit B);
  - f) The terms and conditions contained on Purchaser's Order Documents, if used; and
  - g) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Equipment to Purchaser.

### **31. Entire Agreement**

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

### **32. Authority for Modifications and Amendments**

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by DIS and Contractor.

### **33. Additional Services**

Contractor may submit new Services with associated discounts or prices to the DIS Contract Administrator. New or changed Services submitted by Contractor shall meet all mandatory requirements of the RFQ. Additional Products or Services that are determined by DIS to be appropriate to the scope of this Master Contract, may be added to Schedule A of this Master Contract by an instrument in writing, signed by both Contractor and DIS. Such writing shall include a specific description of the additional Services, pricing, and additional terms and conditions as relevant.

### **34. Independent Status of Contractor**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW (State Civil Service Law) or Title 51 RCW (Industrial Insurance).

### **35. Governing Law**

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County or the county in which Purchaser is located within the state of Washington.

### **36. Rule of Construction as to Ambiguities**

Each party to this Master Contract acknowledges that such party has reviewed this Agreement and participated in its drafting and agrees that no provision of this Master Contract shall be construed against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have drafted, structured or dictated such provision or provisions.

### **37. Subcontractors**

Contractor may, with prior written permission from DIS Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor's duties. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employees, or violations of the **Protection of Purchaser's Confidential Information** section of this Contract occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Protection of Purchaser's Confidential Information, Publicity and Review of Contractor's Records** sections of this Contract shall apply to all Subcontractors.

### **38. Assignment**

- 38.1. With the prior written consent of DIS, which consent shall not be unreasonably withheld, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff.
- 38.2. DIS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

### **39. Publicity**

- 39.1. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's products by DIS or Purchaser and shall not be so construed by Contractor in any advertising or other publicity materials.
- 39.2. Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Contractor wherein DIS' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name with Contractor's Products or Services may, in DIS' or Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS or Purchaser *prior* to such use.

### **40. Review of Contractor's Records**

- 40.1. Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 40.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Contractor shall provide access to these items within Thurston County or the county where Purchaser is located. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- 40.3. Contractor shall incorporate in its subcontracts this section's records retention and review requirements.

- 40.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

## General Provisions

### 41. Save Harmless

Contractor shall defend, indemnify, and save DIS and Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Contractor's obligation to defend, indemnify, and save DIS and Purchaser harmless shall not be eliminated or reduced by any alleged concurrent DIS or Purchaser negligence.

### 42. Insurance

- 42.1. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to DIS within ten (10) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this Contract's termination.
- 42.2. The minimum acceptable limits shall be as indicated below, with no deductibles, unless otherwise indicated, for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
  - b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
  - c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
  - d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million; and
  - e) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate.
- 42.3. Contractor shall pay premiums on all insurance policies. DIS shall be named as an additional insured on all general liability, automobile liability, and umbrella policies, and Contractor shall

provide a copy of the policy endorsement(s) designating DIS as an additional named insured. Such policies shall also reference this Contract number T05-MST-001 and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.

- 42.4. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
- 42.5. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 42.6. Contractor shall furnish to DIS copies of certificates and endorsements of all required insurance within thirty (30) calendar days of this Contract's Effective Date and copies of renewal certificates and endorsements of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS sole option, result in this Contract's termination.
- 42.7. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to DIS in this Contract.

#### **43. Industrial Insurance Coverage**

Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

#### **44. Licensing Standards**

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

#### **45. Antitrust Violations**

Contractor and Purchaser recognize that in actual economic practice overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Contractor hereby assigns to Purchaser any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

#### **46. Compliance with Civil Rights Laws**

During the performance of this Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with the State.

#### **47. Severability**

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

#### **48. Waiver**

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

#### **49. Treatment of Assets**

- 49.1. Title to all property furnished by Purchaser shall remain in Purchaser.
- 49.2. Any Purchaser property furnished to Contractor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 49.3. Contractor shall be responsible for any loss of or damage to property of Purchaser that results from Contractor's negligence or that results from Contractor's failure to maintain and administer that property in accordance with sound management practices.
- 49.4. Upon loss or destruction of, or damage to any Purchaser property, Contractor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 49.5. Contractor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 49.6. All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

#### **50. Contractor's Proprietary Information**

Contractor acknowledges that DIS and Purchaser are subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information, must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless

Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

## **Disputes and Remedies**

### **51. Disputes**

- 51.1. In the event a bona fide dispute concerning a question of fact arises between Contractor and Purchaser and it cannot be resolved between the parties or by the DIS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 51.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
  - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
  - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
  - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 51.3. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.
- 51.4. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 51.5. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

### **52. Attorneys' Fees and Costs**

- 52.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including



necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

- 52.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

### **53. Non-Exclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

### **54. Failure to Perform**

If Contractor fails to perform any substantial obligation under this Contract, DIS or Purchaser shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Contractor still has not performed, then DIS or Purchaser may withhold all monies due and payable to Contractor, without penalty to DIS or Purchaser, until such Failure to Perform is cured or otherwise resolved.

### **55. Limitation of Liability**

- 55.1. The parties agree that Contractor, DIS and Purchaser shall not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except for claims related to bodily injury or death,. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default** and **Review of Contractor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 55.2. Contractor, DIS and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor, DIS or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DIS or Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DIS, Purchaser, or their respective Subcontractors.
- 55.3. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.
- 55.4. Neither Contractor, DIS nor Purchaser shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

## Contract Termination

### 56. Termination for Default

- 56.1. If Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its material obligations under this Contract, then the DIS Contract Administrator or Purchaser shall give Contractor written notice of such failure or violation, and the failure or violation shall be corrected by Contractor within thirty (30) calendar days or as otherwise agreed. If such breach is not capable of cure within thirty (30) days, Contractor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Contractor's failure or violation is not so corrected, this Master Contract may be terminated immediately by written notice from the DIS Contracting Officer to Contractor, or an Order may be terminated by written notice to Contractor from Purchaser.
- 56.2. In the event of termination of an Order by Purchaser or this Master Contract by DIS, Purchaser or DIS shall have the right to procure the Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Services and the replacement costs of such Services acquired from another vendor; (ii) if applicable, all administrative costs directly related to the replacement of the Order or this Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to Purchaser or DIS resulting from Contractor's breach. DIS and Purchasers shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe DIS or Purchasers for Contractor's default.
- 56.3. If either DIS or Purchaser violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its obligations under this Master Contract, then Contractor shall give DIS or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DIS or Purchaser within thirty (30) calendar days, or as otherwise agreed. If such failure to perform is not so corrected, Purchaser's Order may be terminated by written notice from Contractor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Contractor to DIS.
- 56.4. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 56.5. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

### 57. Termination for Convenience

- 57.1. When, at the sole discretion of DIS, it is in the best interest of the State, the DIS Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Contractor.
- 57.2. Purchaser may terminate its Order upon sixty (60) days notice to Contractor. If an Order is so terminated, Purchasers are liable only for payments for Services received by Purchaser prior to the effective date of termination and the amount of Termination Liability, if any.

## **58. Termination for Withdrawal of Authority**

In the event that DIS' or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Master Contract or any Order and prior to normal completion, DIS may terminate this Master Contract, or a Purchaser may terminate its Order(s), by seven (7) Business Days written notice to Contractor. No penalty shall accrue to DIS and Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its Order(s) in order to acquire similar Services from a third party.

## **59. Termination for Non-Allocation of Funds**

If funds are not allocated to DIS or a Purchaser to continue this Master Contract or Order in any future period, DIS may terminate this Master Contract, or Purchaser may terminate its Order(s) by seven (7) Business Days written notice to Contractor or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. DIS or Purchasers will not be obligated to pay any further charges for Services. DIS or Purchaser agree to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DIS or Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its Order(s) in order to acquire similar Services from a third party.

## **60. Termination for Conflict of Interest**

DIS may terminate this Master Contract, or Purchaser its Order(s), by written notice to Contractor if DIS or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Master Contract or any Order is so terminated, DIS and Purchasers shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Master Contract or any Order.

## **61. Termination Procedure**

- 61.1. Upon termination of this Master Contract or any Order, DIS and Purchaser, in addition to any other rights provided in this Master Contract and applicable Order, shall have access to any Purchaser owned Racks or other equipment located at Contractor's Site Services Location and shall remove the Racks and other equipment within a reasonable time.
- 61.2. Purchaser shall pay to Contractor the agreed-upon Price for the Services received by Purchaser and Termination Liability, if any. Failure to agree on the amount shall be a dispute within the meaning of the **Disputes** section of this Master Contract. Purchaser may withhold from any amounts due Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 61.3. Purchaser shall pay amounts due Contractor as the result of termination within thirty (30) calendar days of notice of the amounts due.

## **62. Covenant Against Contingent Fees**

- 62.1. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission,

percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.

- 62.2. In the event Contractor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser, or, in Purchaser's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

## **Activity Reporting and Administration Fee**

### **63. DIS Master Contract Administration Fee and Collection**

- 63.1. All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Contractor and remitted to DIS.
- 63.2. The Master Contract Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax.
- 63.3. The Master Contract Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice.
- 63.4. Contractor shall hold the Master Contract Administration Fee in trust for DIS until the Fees are remitted to the DIS Contract Administrator, along with the Master Contract Activity Report.

### **64. Activity Reporting**

- 64.1. Contractor shall submit to the DIS Contract Administrator a quarterly Activity Report of all Services purchased under this Master Contract. The report shall identify:
- a) This Master Contract number;
  - b) Each Purchaser making purchases during that month;
  - c) The total purchase price (excluding sales tax) for each Purchaser;
  - d) The DIS Master Contract Administration Fee for each Purchaser;
  - e) The sum of all purchase prices (excluding sales tax) for all Purchasers; and
  - f) The total amount of the DIS Master Contract Administration Fee.
- 64.2. The Activity Reports and the DIS Administration Fee shall be due on a quarterly basis in accordance with the following schedule:

<b><u>For activity in the months:</u></b>	<b><u>Report &amp; Fee Due:</u></b>
January, February, March	April 15 <sup>th</sup>
April, May, June	July 15 <sup>th</sup>
July, August, September	October 15 <sup>th</sup>
October, November, December	January 15 <sup>th</sup>

- 64.3. This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Contractor.
- 64.4. Activity Reports are required even if no activity occurred.
- 64.5. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

## **65. Site Services Availability Report**

Contractor shall provide a Site Services Availability Report on a quarterly basis at the same time as the Activity Report. The Site Services Availability Report shall detail the types and amount of space and Site Services then available to Purchasers.

## **66. Failure to Remit Reports/Fees**

- 66.1. Failure of Contractor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this Master Contract with Contractor.
- 66.2. Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Contractor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.
- 66.3. The DIS Contract Administrator will notify Contractor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Contractor to a forfeiting Purchaser may be considered failure to perform by Contractor.
- 66.4. If the performance issues are resolved, DIS, at its option, may reinstate a Contractor's participation or a Purchaser's right to purchase.

## **Contract Execution**

### **67. Authority to Bind**

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

**68. Counterparts**

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

**69. Facsimile Execution**

The parties agree that this Contract may be executed by facsimile signature, and shall be effective as of the date of such facsimile signature. If executed by facsimile, the parties agree to provide original signature pages within ten (10) business days of facsimile execution.

*In Witness Whereof*, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

**Approved**

State of Washington  
Department of Information Services

  
\_\_\_\_\_  
Signature

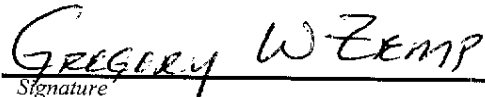
Michael D. McVicker  
\_\_\_\_\_  
Print or Type Name

3/16/2005  
\_\_\_\_\_  
Date

Assistant Director  
\_\_\_\_\_  
Title

**Approved**

Liberty Lake Internet Exchange, LLC

  
\_\_\_\_\_  
Signature

GREGORY W ZEMP  
\_\_\_\_\_  
Print or Type Name

3/01/05  
\_\_\_\_\_  
Date

MEMBER / GENERAL MANAGER  
\_\_\_\_\_  
Title

**Approved as to Form**

State of Washington  
Office of the Attorney General

Email approval (attached) dated March 7, 2005

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Contractor Information**

Contractor's UBI Number: 602 325 719

Minority or Woman Owned Business Enterprise

Yes \_\_\_\_\_ No ☒  
(Certification Number)

## Carlen, Bryce (DIS)

---

**From:** Shaw, Suzanne (ATG)  
**Sent:** Monday, March 07, 2005 11:26 AM  
**To:** Carlen, Bryce (DIS)  
**Subject:** FW: Final Contract

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** wa.gov  
**Attachments:** T05-MST-001Final.pdf



T05-MST-001Final.p  
df (342 KB)

I have reviewed the attached Master Contract. Please consider this e-mail message my approval as to form.

---

Suzanne Shaw, AAG  
Office of the Attorney General  
Government Operations Division  
P.O. Box 40108  
Olympia, WA 98504-0108  
suzannes@atg.wa.gov  
360 753 9671  
360 586 3593 fax

-----Original Message-----

From: Carlen, Bryce (DIS)  
Sent: Monday, March 07, 2005 9:12 AM  
To: Shaw, Suzanne (ATG)  
Subject: FW: Final Contract

Per conversation . . .

-----Original Message-----

From: Carlen, Bryce (DIS)  
Sent: Tuesday, March 01, 2005 12:48 PM  
To: 'Chris Walter'  
Subject: Final Contract

Chris,

Per conversation, here is the final, with pricing attached. Please call me if there are any issues. Otherwise, I'll plan on seeing you tomorrow. Have a safe trip over.

Best,  
Bryce

**Schedule A**  
***Price List***

as of March 16, 2005

**for**

**Business Continuity Site Services in the Large Site Services Category**

**Contract Number T05-MST-001**

**with**

**Liberty Lake Internet Exchange, LLC**

***—See separate link on the TechMall for current contract pricing—***



**SAMPLE**  
**Statement of Work**  
**Outline**  
**for**  
**Business Continuity Site Services**

This Statement of Work (SOW) is entered into between the Purchaser and the Contractor identified in the signature block hereto, and incorporates by this reference the terms and conditions of Master Contract T05-MST-001 in effect between the Department of Information Services (“**DIS**”) and Contractor. The terms and conditions of this SOW shall not conflict with the terms and conditions of the Master Contract; in the event of any conflict, the Master Contract shall prevail.

**1. Services**

*[Describe the Services to be provided, i.e., Cold, Warm or Live Site Services and any optional or additional Services.]*

**2. Scope of Services**

Contractor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of *[Cold, Warm or Live Site Services]*, as set forth below:

*[Describe in detail what Services Contractor will perform. Identify all tasks, work elements and objectives of the SOW e.g.,, number and type of rack, amount of floor space, power needs, UPS, and timeline for installation and/or activation, etc. Describe in detail any additional or optional Services.]*

**3. Contacts**

*[Identify the primary contacts for Purchaser and the Contractor Site Activation Manager and other Contractor contacts]*

**4. Compensation and Payment**

Purchaser shall pay Contractor an amount not to exceed *[\_\_\_\_\_]* dollars (\$\_\_\_\_) *[specify maximum dollar amount]* for the performance of all Services as set forth in this SOW. Contractor’s compensation for Services rendered shall be based on Contractor’s Prices as set forth in the Master Contract’s Schedule A, *Price List* as follows:

## **5. Term of the SOW**

This SOW shall commence on the date indicated on the signature page and shall continue for at least one (1) year, the Minimum Service Commitment. After the Minimum Service Commitment has been met, the SOW can be renewed for terms of less than a year as agreed by Purchaser and Contractor. A SOW may be terminated in accordance with the termination sections of the Master Contract or as otherwise agreed between the parties. SOWs or renewal SOWs entered into prior to the expiration or other termination of the Master Contract may be completed under the Master Contract terms and conditions in effect when the SOW or renewal SOW was entered into. In no event shall the term of any SOW extend more than two (2) years beyond the term of the Master Contract.

## **6. Termination Liability**

If Purchaser terminates this SOW without cause prior to the expiration of the Minimum Service Commitment, Purchaser shall pay to Contractor Termination Liability in an amount equal to 40% of the monthly recurring cost of the Services terminated times the number of months remaining in the Minimum Service Commitment period, plus any unpaid nonrecurring charges.

## **7. Purchaser Equipment**

Title to and control of all Purchaser equipment shall remain in Purchaser. Purchaser shall be responsible for all costs and liabilities for transportation, installation and deinstallation of its equipment unless otherwise agreed to in this SOW. Upon termination of this SOW, Contractor shall provide access to Purchaser who shall remove all of its equipment in a reasonable amount of time.

## **8. Installation**

*[Address items in addition to Section 23 of the Master Contract.]*

## **9. Access**

*[Access needs will vary depending on type of Site Services and Purchaser needs. Specify Purchaser needs here.]*

## **10. Activation Plan**

*[Contractor and Purchaser will need to work out the details of operation upon a Declaration of Disaster.]*

## **11. Contractor Staff, Roles and Responsibilities**

*[Identify Contractor staff who will be involved, naming individuals key to the project, and describe in detail their roles and responsibilities.]*

## **12. Purchaser Staff, Roles and Responsibilities**

*[Identify Purchaser staff who will be involved and describe in detail their roles and responsibilities.]*

## **13. Additional Terms and Conditions Specific to this SOW**

*[State additional terms and conditions specific to this SOW not found in Master Contract, if any.]*

**14. Effective Date**

The Effective Date of this SOW shall be \_\_\_\_\_, or the date of the last signature of a party to this SOW.

***In Witness Whereof***, the parties hereto, having read this SOW in its entirety, do agree thereto in each and every particular.

**Approved**

*[Purchaser]*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print or Type Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**Approved**

Liberty Lake Internet Exchange, LLC

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print or Type Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*